

Application No. : 10/692,835  
Filed : October 23, 2003

REMARKS

Claims 1-11, 19-32, 43, 53-57 and 60-65 were pending in the application. By this paper, Applicant has amended Claims 1, 3, 19, 20, 29, 32, 60 and 63, and added new Claims 66-69. Hence, Claims 1-11, 19-32, 43, 53-57 and 60-69 are presented for examination herein.

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*Request for Continued Examination (RCE)*

Applicant files herewith an RCE for continued prosecution of the present application.

*§112 Rejections*

10        **Claims 3, 5, 8** – Per page 2 of the Office Action, Claims 3, 5, 8 stand rejected under 35  
USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly  
claim the subject matter which applicant regards as the invention. Specifically the Examiner takes  
issue with the phrase “first and second pluralities”. Applicant has herein amended Claim 3 so that  
it is now clearer that the phrase “first and second pluralities” refers to the pads of Claim 1. Claims 5  
15 and 8 depend on Claim 3.

Applicant therefore submits that the rejection has been overcome, and respectfully requests  
that the rejection be withdrawn.

*§102 Rejections*

20        **Claims 1, 29, 32, and 63** – Per page 2 of the Office Action, independent Claims 1, 29, 32  
and 63 stand rejected under 35 USC 102(b) as being anticipated by Vasko et al. (U.S. Patent No.  
4,683,709, hereinafter “Vasko”). Applicant has herein amended Claims 1, 29, 32, and 63 and  
respectfully traverses the Examiner’s rejections. Specifically, each of the aforementioned claims  
contains limitations related to the recited pads being “*sufficiently distant from said spine*” and  
25 “*maintaining substantially unimpeded movement of the spinal column*” or similar for the recited  
saddle pad. Support for these amendments can be found at page 24, lines 3 – 9 of Applicant’s  
specification as filed.

Vasko in no way teaches or suggests maintaining substantially unimpeded movement of the  
spinal column. Rather Vasko teaches:

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*“The pockets are located immediately adjacent to and on each side of the  
centerline 26 so as to hold the inserts 36 and 38 parallel to and in immediate*

*proximity to the horse's spine. This allows the load of the rider and the accompanying shock or energy transfers to be evenly distributed along the horse's back avoiding any undue abrasion of the thoracic spinal vertebrae". (Col. 3, lines 24-31) {Emphasis added}*

5 The Examiner is also referred to Figs. 2, 4 and 9 of Vasko, which each show pads disposed immediately adjacent the spine of the animal.

The foregoing passage and Figures underscore one salient distinction between the teachings of Vasko and Applicant's invention as claimed. Specifically, while Vasko teaches placing the inserts in immediate proximity to the horse's spine and evenly distributing the load of the rider along the horse's back, Applicant's invention utilizes a design which leaves the movement of the spine unimpeded resulting in greater comfort for the animal. For example, in Claim 1, the first and second plurality of pads are disposed laterally on either side of and sufficiently distant from the spine (as opposed to being immediately proximate the spine as taught in Vasko), thus providing the living subject of Claim 1, unimpeded movement of the spine. The pads of Applicant's invention interact with different portions of the animal's anatomy than those of Vasko, and hence the operating principle of the claimed invention(s) is different from that of Vasko's invention.

10 To the contrary, Vasko merely tries to avoid "*undue abrasion*" (see passage above) and places its pads immediately adjacent the spine, and hence effectively *teaches away* from Applicant's claimed invention. **Hence, Vasko inherently cannot provide unimpeded spinal movement, since the only places it contemplates putting the pads are immediately adjacent the spine.**

15 Vasko therefore cannot render obvious Applicant's inventions of Claims 1, 29, 32 and 63 as presented herein, since (i) it does not teach or suggest (or recognize the value of) placing the pads sufficiently distant from the spine, and (ii) it teaches away from such sufficiently distant placement be requiring the pads to be immediately adjacent.

20 **Claim 19** – Per page 2 of the Office Action, Claim 19 stands rejected as being anticipated by Vasko. Applicant has herein amended Claim 19 so that it now recites a limitation whereby, a plurality of pads distribute the load substantially evenly on said living subject only over a plurality of non-contiguous regions of said living subject's anatomy. Support for Applicant's amendment can be found, *inter alia*, at page 25, lines 12 – 18 of Applicant's specification as filed.

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In contrast, Vasko teaches only contiguous padding. Although Vasko does teach multiple pockets and multiple inserts (see Col. 5, lines 3 – 8), Vasko does not teach, *inter alia*, distributing these pockets and inserts in a non-contiguous manner, and using only these non-contiguous pads to distribute load. As noted above, Vasko simply does not contemplate using the same regions of the animal's anatomy as Applicant's invention for load distribution.

Applicant therefore respectfully submits that Claim 19 as amended is in condition for allowance.

**Claim 43** – Per page 2 of the Office Action, Claim 43 stands rejected as being anticipated by Vasko. Applicant respectfully traverses.

Specifically, Applicant submits that Vasko does not teach or suggest the recited contour element of Claim 43, let alone a contour element disposed within a respective one of said pockets. The Examiner appears to cite elements 19, 22, 26 as teaching a contour element disposed within a respective one of said pockets (see first full paragraph of page 6 of the Office Action); however, none of these elements are resident within any pocket taught by Vasko.

Applicant further notes that the configuration of Vasko does not teach a saddle that will remain in substantially constant orientation with respect to said animal; rather Vasko teaches a saddle which will tilt and pitch with the animal's movement, inapposite to the stated function (i.e. tilt-inhibiting) of the apparatus of Claim 43. Vasko is quintessentially representative of the prior art apparatus and deficiencies that Applicant's claimed invention is meant to address.

Having demonstrated that Vasko does not teach each and every limitation of Claim 43 as required by law for *prima facie* anticipation, Applicant also notes (in the context of any prospective obviousness rejection) that “[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103.” In re Sponnoble, 405 F.2d 578, 585, 160 USPQ 237, 243 (CCPA 1969). See MPEP 2141.02; “The court found the inventor discovered the cause of moisture transmission was through the center plug, and there was no teaching in the prior art which would suggest the necessity of selecting applicant's plug material which was more impervious to liquids than the natural rubber plug of the prior art.” {emphasis added}. Vasko in no way recognizes the problem Applicant's inventions seek to address (i.e., need to

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specifically inhibit saddle tilt during operation). Applicant specifically requests that the Examiner point to such citations in Vasko (Applicant can find none).

Applicant therefore submits that Vasko does not teach each and every element and limitation of Claim 43 (whether explicitly or by inherency), and hence Applicant respectfully  
5 submits that Claim 43 clearly distinguishes over Vasko.

**Claim 53** – Per page 2 of the Office Action, Claim 53 stands rejected as being anticipated by Vasko. Applicant traverses. Specifically, Applicant submits that Vasko does not teach or suggest a pad element “particularly shaped to substantially accommodate a particular withers  
10 region artifact on the anatomy of an animal”. Applicant respectfully requests that the Examiner point to specific support for the Examiner’s contention that Vasko teaches accommodation of a particular withers region artifact (Applicant can find none).

Applicant also respectfully directs the Examiner’s attention that the aforementioned language of Claim 53 denotes specific structure, namely that the pad element should be shaped to  
15 accommodate a particular withers region artifact.

Applicant therefore submits that Vasko does not teach each and every element and limitation of Claim 53 (whether explicitly or by inherency), and hence Applicant respectfully submits that Claim 53 clearly distinguishes over Vasko.

**Claim 60** – Per page 2 of the Office Action, Claim 60 stands rejected as being anticipated by Vasko. Applicant has herein amended Claim 60 to clarify structure with regards to “adapted to” language. Specifically, Applicant has amended Claim 60 so that it now recites: “*wherein said pad  
elements and said pad cooperatively form a raised feature element to raise a frontal portion of a  
saddle disposed over top of said pad element with respect to a withers region in order to mitigate  
25 tilting or rocking of the saddle.*”

Applicant submits that Vasko does not in any way teach or suggest a raised feature element, let alone a raised feature element that raises a frontal portion of a saddle disposed over top of said pad element with respect to a withers region. Applicant respectfully submits that Claim 60 as amended distinguishes over the prior art, including the art of record and hence is  
30 in condition for allowance.

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*§103 Rejections*

Based on the foregoing remarks and amendments in response to the Examiner's Section 102 rejections, Applicant submits that the Examiner's rejections of Claims 3, 5, 8, 21, 26, 30, 64 and 65 are rendered moot.

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*New Claims*

Applicant submits that new Claims 66-69 are both novel and non-obvious over the art of record, and hence in condition for allowance.

10 *Summary*

Applicant submits that independent Claims 1, 19, 29, 32, 43, 53, 60 and 63 are both novel and non-obvious over the art of record. As the remaining claims depend either directly or indirectly from these claims, Applicant submits that these dependent claims are novel and non-obvious, and hence in condition for allowance, as well.

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*Declaration under 37 C.F.R. § 1.132*

Applicant submits herewith a Declaration Under 37 C.F.R. § 1.132 by Martine Fennelly, inventor and owner of the present application, for commercial success of the inventions claimed in Claims 1, 19, 29, 32, 43, 53, 60 and 63 as presented herein. Applicant believes that each of  
20 these claims has either been amended or traversed with respect to the aforementioned rejections under 35 U.S.C. § 102, and hence would be ripe for a 37 C.F.R. § 1.132 declaration of commercial success to overcome any potential obviousness rejections lodged by the Examiner.

Applicant notes that "[e]vidence rising out of the so-called 'secondary considerations' must always when present be considered en route to a determination of obviousness." See MPEP  
25 Section 716.01(a). **Hence, Applicant submits that the enclosed Declaration clearly supports Applicant's contention that the inventions of these Claims are non-obvious over the art of record.**

*Other Remarks*

30 Applicant hereby specifically reserves the right to prosecute claims of different or broader scope, including those of non-elected inventions, in a continuation or divisional application.

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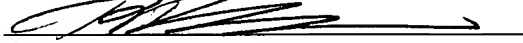
Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and responding to the aforementioned restriction election, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to  
5 patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

10 If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,  
GAZDZINSKI & ASSOCIATES

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By:   
Robert F. Gazdzinski  
Registration No. 39,990  
11440 West Bernardo Court, Suite 375  
San Diego, CA 92127  
Telephone No.: (858) 675-1670  
Facsimile No.: (858) 675-1674